MESSAGE

OF

GOVERNOR JNO. J. McRAE,

IN RELATION TO THE

AMENDMENTS TO THE CONSTITUTION.

DELIVERED TO THE

MISSISSIPPI LEGISLATURE,

ON SATURDAY, THE THIRD DAY OF JAN., 1857.

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GOVERNOR'S MESSAGE.

To the *Senate and House of Representatives:*

GENTLEMEN: Doubts have arisen under amendments, sanctioned by the people, and inserted in the Constitution at your last regular session, as to the commencement of the terms, and the tenure of the offices, of various public officers of the State. Without some well defined understanding of these amendments, by which these doubts shall be removed, if that be possible, and without some well defined action of the various departments of the Government, by which the Legislative, Executive, and Judicial judgment shall be definitely passed upon them, great and serious embarrassment and injury may result to the interests of the State on this subject.

The commencement of the terms, and the tenure of the public officers, being subjects necessarily embraced in your legislation in the adoption of the new Code, I have thought it proper to ask the attention of the Legislature to the existing state of facts under these amendments to the Constitution,—to present to you my views in connection with them; to solicit yours, and if deemed necessary by you, respectfully to suggest the reference of the doubtful questions to the High Court of Errors and Appeals, for a judicial interpretation of them.

Not that I would, in the slightest degree, yield to the principle, that one department of the Government has a right to interfere with, or control the action of another in its legitimate sphere; but as these amendments are now already a part of the Constitution, and will, in the future, as well as the laws passed in pursuance of

them, be subject to judicial interpretation; if that interpret
could be known in advance, it might obviate all difficulties v
may arise out of them.

"TENURE OF OFFICE AMENDMENT."

The first clause of the "Tenure of office amendment," i
these words:

"All public officers in this State—Legislative, Executive a
Judicial, whose terms of office expire at the general election b
held in the year one thousand eight hundred and fifty-seven, a
any subsequent general election, shall continue to hold their fi
ces until the first Monday of January next following the expir
of said terms, and until their successors shall be qualified."

It is plain that this amendment extends the term of all the
sent members of the Legislature—Senators and Representativ
whose terms expire at the general election in 1857, to the
Monday in January, 1858.

It is plain also that it extends the term of the present Secre
of State, Auditor of Public Accounts, State Treasurer, an
sheriffs, coroners, treasurers, snrveyors and rangers in the diffe
counties, to the first Monday in January, 1858. They b
placed by the Constitution under the Executive head, and t
terms expiring at the general election in 1857, unless excep
shall be made in cases of any of these officers, who by law
over the general election in 1857, until their successors
qualified.

It is plain also that it extends in the same manner, the term
all the present judges, clerks, members of the boards of pol
justices of the peace, constables, attorney-general, and district
torneys, whose offices expire at the general election in 1857, (t
being placed by the Constitution under the Judicial head,) unl
exception shall be made in cases of any of these officers, as abo

It is equally plain that this amendment does not affect the te
or tenure of the Governor's office, because he is an Execut
officer whose term does not expire at the general election in
57, or at any general election. Nor does his term expire u
after the time fixed, to which the term of all the other officers
extended, and by which it is limited, (the first Monday in Janua
1858,) and not until the 10th of January, 1858 afterwards.

The Constitution, Art. 5, Sec. 1, says: "The chief executi

power of this State shall be vested in a Governor, who shall hold his office for two years from the time of his installation."

The installation of the Governor took place on the 10th day of January, 1856. His term of office would then expire the 10th day of January, 1858. It is not questioned here that this term could either be abridged, or extended, or that the office might not be altogether abolished by an amendment of the Constitution; though this is a point which admits of doubt. But does the above amendment to the Constitution do either of these? If it does not, a mere legislative enactment can neither abridge or extend the term, or abolish the office.

At your last session an act was passed, on the 9th of January, 1855 increasing the salary of the Governor. The Legislature then decided the question, that the then existing term of the Governor's office did not expire until the 10th of January, 1856. The Constitution says, the Governor's "compensation shall not be increased or diminished during the term for which he shall be elected." Had the Legislature doubted, that the then existing term had not at that time expired, they would not have passed that act. Had I doubted it, although the act enured to my benefit, I should have withheld from it my approval. The Governor's present term, then, of course does not expire until the 10th of January, 1858,—unless changed by these amendments, which it is not, as he was not an officer, in the words of the amendments, whose term expired at the general election, in November, 1857.

The second clause of this amendment, being the proviso to it, is in these words: "Provided such of said officers as are required to give bond for the discharge of their duties, shall give bond and security for said extended term, as may be provided by the Legislature; and the terms of office of all officers chosen at the general election in the year eighteen hundred and fifty-seven, or at any subsequent general election, shall commence on the first Monday of January next succeeding the election, and shall continue for the time now fixed by the Constitution, and until their successors shall be qualified."

The proviso is simply to carry into effect the first clause of the amendment—to fix the commencement of the terms of all the public officers, whose terms expired at the general election in 1857, or at a subsequent general election, on the first Monday of January next succeeding their election, and to continue the duration of

the terms of all the public officers as now fixed by the Constitut
and until their successors are qualified. In fact, the whole ob
of this amendment was, simply to change the commencemer
the terms of all the public officers, from November to Janu
the Governor's office excepted, whose term commenced after e
first of January, and whose installation and tenure of office w
left as prescribed by the Constitution.

ELECTION AMENDMENT.

The first clause of the "Election Amendment," is in th
words:

"All general elections by the people of this State shall be h
on the first Monday in October, and be concluded in one day;
the first Monday in October, 1857, and biennially thereafter.
election shall be held for Representatives in Congress, and
State officers and members of the Legislature, except for offic
and Senators entitled to hold over after November, 1857, who sh
continue in office until their successors are entitled to succeed th
therein."

This clause changes the time of holding the general electi
from the first Monday of November, to the first Monday in O
ber; and reduces it from two days to one. It provides also for
election on the first Monday in October, 1857; and biennia
thereafter for Representatives in Congress, and all State offic
to-wit: Secretary of State, Auditor of Public Accounts, State Tr
surer and Attorney General, (unless exception shall be made of
of these officers, who by law, hold over until their successors
qualified;) and members of the Legislature, that is all Represen
tives, and those Senators, whose terms expire in November, 18
But it excepts "Officers and Senators entitled to hold over after N
vember, 1857, who are to continue in office "until their success
are entitled to succeed them therein." It is plain then, that t
amendment does not touch the office of Governor, he being a St
officer, entitled to hold over after November, 1857; and no pro
sion whatever is made, for the election of Governor, by this amen
ment.

The second clause of this amendment says:

"The Legislature shall convene on the first Monday of Nove
ber, 1857, and biennially thereafter; but may be specially c
voked by the Governor at other times."

This clause changes the time of the regular meeting of the Legislature, from the first Monday in January, 1858, to the first Monday in November, 1857, leaving it to be convoked specially by the Governor at other times, as now provided by the constitution.

The "tenure of office amendment," extends the term of the present members of the House of Representatives, and of those Senators whose terms expire in November, 1857, to the first Monday in January, 1858. The first clause of the "election amendment," as shown above, provides for the election on the first Monday of October, 1857, of members of the House of Representatives, and of Senators whose terms expire in November, 1857.

The question then arises,

First, which of these two sets of Representatives and Senators will be entitled to seats in, and to hold the session of the Legislature to convene on the first Monday in November, 1857?

Secondly, if it be decided that the present ones are entitled, and the session of the Legislature should continue until the first Monday in January, 1858, could those elected in October, 1857, take their seats, on the expiration of the term of the others, and the session of the Legislature be thus continued? Or would the session terminate by the dissolution of the body, or the adjournment of the Legislature on the first Monday in January, 1858; and the Senators and Representatives elected in October, 1857, be left to take their seats in the regular session of the Legislature, the first Monday in November, 1859. This they could not do, because the terms of office of these members of the House of Representatives, would have expired the first Monday of October, previous.

Thirdly, should the present members of the Legislature, convene in regular session, on the first Monday of November, 1857, and adjourn *sine die*, or should they hold their session to the first Monday in January, 1858, would not the convocation of the Legislature in special session by the Governor, the day after the first Monday in January, 1858, or at a future day, bring the Representatives and Senators elected in October, 1857, into regular session, and remove all difficulty on this point?

The third clause of this amendment says:

'The Governor's official term shall commence on the third Monday in November; and that of the Secretary of State, Auditor of Public Accounts, State Treasurer and Attorney General, on the first Monday of January, next, after his and their election."

This clause does not fix the commencement of the Governo
term on the third Monday of November, 1857; but on the th
Monday in November after his election. No provision, howev
as has been shown, is made by this amendment for the electio
Governor. The question then arises, can the Governor's elect
take place as heretofore, on the first Monday and day followin
November, which would separate it from the other elections, a
make it the first Monday and day following in November, 1857
But this would be in direct conflict with the first part of the f
clause of this amendment, which declares, that "all general el
tions by the people of this State, shall be held on the first Mon
in October, and be concluded in one day." It therefore cannot
done. Can any new Legislative enactment remedy the difficul
If not, then the term of the present incumbent without an interr
num is perpetual, until some additional amendment of the Const
tion, shall provide for its termination. Because he is an officer
titled to hold over after November, 1857, excepted from the ge
al election in October, 1857, and "continued in office until
successor is entitled to succeed him therein," by the first claus
this amendment.

Being the incumbent myself, I wish to say to the Legislat
and to the people of the State, who have honored me with the
sition, that I do not under any circumstances desire to hold the
fice for a longer period than that for which I supposed, and they
derstood I was elected, for two years, that is to the 10th Janu
1858. I would prefer to close my term the third Monday of
vember, 1857, if my successor is at that time lawfully entitle
succeed me, and commence his official term.

This clause fixes definitely the commencement of the terms of
Auditor, Treasurer and Attorney General, on the first Monday
January, next, after their election, which is provided for in the f
clause.

The last clause of this amendment is in these words: "On
first Monday of October, 1858, and biennially thereafter, an el
tion shall be held for all County, District, Judicial and Ministe
officers, (except officers who may then be entitled to hold over a
January, 1859, or until the time of holding another general el
tion) and the official term of all such officers then and thereaf
elected, shall commence on the first Monday of January next,
ter this election, but all such officers elected in 1855, or previou

w se official terms in the absence of this provision, would expire in November, 1857, shall continue in office until the first of January 1859."

his clause relates exclusively to the local and district officers, as ontradistinguished from the general or State officers, provides fo heir election and fixes the commencement of their terms appare ly without confusion, except in cases of the judiciary.

he last clause of the "tenure of office amendment" continues th terms of all officers "for the time now fixed by the Constitutic ; and until their successors shall be qualified." The first part of he above clause of the election amendment makes all the Judici officers, elective biennially.

low this difficulty is to be reconciled, I am not able to perceive, by ny construction which can be given to the two amendments to m e them harmonise.

he questions of doubt under these amendments are:

irst, what members of the Legislature are to hold the regular se ion to convene on the first Monday of November, 1857?

econd, if the present members are to hold that session, when and ho are the members elected in October, 1857, to commence their te n and get into regular session?

hird, when does the Governor's official term close? And when w his successor be entitled to succeed him? When will his succe or be elected, no provision being made for his election, by either of hese amendments?

ourth, how can the Judges continue in office for the "time now fi d by the Constitution" and yet be elected biennially?

JOHN J. McRAE.

Executive Office, Jan. 3d, 1857.

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